

U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street
Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)



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CASE NUMBER: 2000-ERA-40

DATE: February 8, 2001

In the Matter of:

DOUGLAS A. PALASCHAK,

Complainant,

vs.

TRANSCO PRODUCTS, INC.,

Respondent.

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT AND
DISMISSING COMPLAINT WITH PREJUDICE**

This is a proceeding arising under the Energy Reorganization Act of 1974 ("ERA"), as amended, 42 U.S.C. Section 5851 (1988 and Supp. IV 1992), and its implementing regulations found at 20 C.F.R. Part 24. On January 30, 2001, this Court received the parties' Joint Motion to Approve Settlement Agreement, for Order of Dismissal, to Treat Settlement Agreement as Confidential, and to Postpone Trial, signed by Respondent's counsel and by Claimant (representing himself), as well as an individual Confidential Settlement Agreement, under seal, signed by both parties. All such documents are attached hereto and incorporated herein by reference (with the Confidential Settlement Agreement remaining under seal). The Motion to Postpone Trial was granted on January 31, 2001.

The Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which rules are controlling in the absence of a specific provision at Part 24.

Section 18.9 allows the parties in a proceeding before an administrative law judge to reach an agreement on their own. 29 C.F.R. Section 18.9(a)-(c). Once an agreement has been reached by the parties, the regulation permits the parties to “[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action.” 29 C.F.R. Section 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty (30) days if satisfied with the agreement’s form and substance. 29 C.F.R. Section 18.9(d).

The judge must review the settlement agreement to determine whether its terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. §5851(b)(2)(A) (1988). *Thompson v. U.S. Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Bonanno v. Stone & Webster Engineering Corp.*, 97 ERA 33 (ARB 6-27-97).

Upon careful review, this Judge has determined that the Settlement Agreement fully comports with precedent established by the Secretary and/or Administrative Review Board.

The Settlement Agreement contains a paragraph which provides that the parties shall keep the terms of the settlement confidential, with some delineated exceptions. I note, however, that the parties have attempted to bring this confidentiality provision into compliance with applicable case law by specifically providing that the confidentiality provision does not restrict disclosure where required by law.

The parties have designated the Settlement Agreement as confidential commercial information, as defined at 29 C.F.R. Section 70.26, and thereby attempt to preclude disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552 (1988).

FOIA, however, requires agencies to disclose requested documents unless they are exempt from disclosure. See *Bonanno, supra*, at p.2; *Klock v. Tennessee Valley Auth.*, 95 ERA 20 (ARB 5-30-96), at p.2; *Darr v. Precise Hard Chrome*, 95 CAA 6 (Sec’y 5-9-95), at p.2; *Webb v. Consolidated Edison Co.*, 93 CAA 5 (Sec’y 11-3-93), at p.1. Since no FOIA request has been made, “it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding.” *Darr, supra*, at pp.2-3. See also, *Debose v. Carolina Power and Light Co.*, 92 ERA 14 (Sec’y 2-7-94), at p.3. Nevertheless, the Settlement Agreement shall be placed in a portion of the file clearly designated as confidential commercial information which must be handled in accordance with the appropriate procedure for a FOIA request, which procedure is found at 29 C.F.R. Section 70.26. See generally, *Bonanno, supra*, at n.1.

The Secretary requires that all parties requesting settlement approval of cases arising under environmental protection statutes provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Co.*, 95-TSC-7 (ARB Dec. 3, 1996), slip op. at 3. The second paragraph at numeral 18, on page 12 of the Settlement Agreement states that

Employer and Employee certify that there are no side agreements or other settlement agreements for claims arising from the same factual circumstances that form the basis of the OSHA Complaint, the OSHA Litigation and the NRC Complaint. This Agreement constitutes the entire and only agreement between Employer and Employee regarding the claims referred to in the preceding sentence.

I find that there were no other settlement agreements arising from the same factual circumstances which formed the basis for this claim.

Accordingly, it is hereby RECOMMENDED that the Settlement Agreement between Complainant Douglas A. Palaschak and Respondent Transco Products, Inc., be APPROVED and that the matter be DISMISSED WITH PREJUDICE. It is FURTHER RECOMMENDED that the Settlement Agreement be designated as confidential commercial information to be handled in accordance with 29 C.F.R. Section 70.26.

ANNE BEYTIN TORKINGTON
Administrative Law Judge

San Francisco, California

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. 24.8, a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, Frances Perkins Building, Room S-4309, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of the Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. 24.8 and 24.9, as amended by 63 Fed.Reg. 6614 (1998).